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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 PAMELA FOX KUHLKEN,  
11 Plaintiff,  
12 v.  
13 COUNTY OF SAN DIEGO, SAN  
14 DIEGO SHERIFFS DEPUTY D. SMITH  
15 (Id # 1024) and DOES 1-5,  
16 Defendants.

Case No.: 3:16-CV-2504-CAB-DHB

**ORDER ON PLAINTIFF'S MOTION  
TO RETAX COSTS**

[Doc. No. 45]

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18 On January 16, 2018, the Court granted Defendants' motion for summary judgment  
19 [Doc. No. 32], and the Clerk of Court entered judgment in favor of Defendants [Doc. No.  
20 33]. On January 30, 2018, Defendants filed a Bill of Costs totaling \$5,147.90 [Doc. No.  
21 34], and a hearing was set for February 16, 2018 [Doc. No. 35]. On February 5, 2018,  
22 Plaintiff filed a notice of appeal to the Ninth Circuit [Doc. No. 36], but at no point did she  
23 file a response or opposition to the Bill of Costs. As a result of the lack of opposition from  
24 Plaintiff, the hearing was vacated, and on February 16, 2018, the Clerk of Court entered an  
25 order taxing costs of \$5,122.90. [Doc. No. 41.] The Clerk's order called attention to "Local  
26 Rule 54.1.h which provides in part that a motion to re-tax by any party, in accordance with  
27 Rule 54(d), FRCivP and Local Rule 7.1, shall be served and filed within seven (7) days  
28

1 after receipt of the Order Taxing Costs, or unless within the seven (7) day period the court  
2 permits the motion to be made orally.” [*Id.* at 2-3.]

3 The Ninth Circuit affirmed the Court’s grant of summary judgment and the mandate  
4 was entered on April 12, 2019. [Doc. No. 42.] Now, two years after the order taxing costs  
5 was entered, and nine months after Plaintiff lost her appeal, Plaintiff has filed a motion to  
6 re-tax costs, on the grounds of financial hardship and because Plaintiff believes her case  
7 involved issues of substantial public importance. The Court need not address the merits of  
8 Plaintiff’s motion because, by failing to file her motion within seven days, Plaintiff waived  
9 her right to challenge the cost award. *Walker v. California*, 200 F.3d 624, 626 (9th Cir.  
10 1999) (“[W]e hold that a party may demand judicial review of a cost award only if such  
11 party has filed a proper motion within the five-day<sup>1</sup> period specified in Rule 54(d)(1).”).  
12 Accordingly, Plaintiff’s motion to re-tax costs is **DENIED**.

13 It is **SO ORDERED**.

14 Dated: March 19, 2020



Hon. Cathy Ann Bencivengo  
United States District Judge

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1 The period has since changed to seven days. *See* Fed. R. Civ. P. 54(d)(1).